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JUL - 2 2007

AND

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
COMPLAINT**

Chun Liang Bao,

) Case No.

Plaintiff,

007 03468 RMW

v.

) **PETITION FOR HEARING ON**
) **NATURALIZATION APPLICATION**
) **UNDER 8 U.S.C. § 1447(b)**

Alberto Gonzales, United States Attorney
General, United States Department of Justice;
Michael Chertoff, Secretary, Department of
Homeland Security;
Emilio T. Gonzalez, Director, United States
Citizenship and Immigration Services;
David Still, San Francisco District Director,
United States Citizenship and Immigration
Services;
Robert S. Mueller III, Director of the Federal
Bureau of Investigation,

) **Immigration Case**

Defendants.

COME NOW, Chun Liang Bao, Plaintiff, in the above-styled and numbered cause, and
for cause of action, would show unto the Court the following:

1. This action is brought for a hearing to decide Plaintiff's naturalization application due to

1 Defendants' failure to adjudicate the application within 120 days after the first examination in
2 violation of the Immigration and Nationality Act ("INA") § 336(b) and 8 U.S.C. § 1447(b).

3 **PARTIES**

4 2. Plaintiff, Chun Liang Bao, is a lawful permanent resident of the United States. Plaintiff
5 applied for naturalization to the United States and was interviewed for her naturalization
6 application on June 5, 2006.

7 3. Defendant Alberto Gonzales is the United States Attorney General and this action is
8 brought against him in his official capacity. Defendant has the authority to administer the oath of
9 allegiance and is the sole authority to naturalize persons as citizens of the United States.

10 4. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security
11 ("DHS"), and this action is brought against him in his official capacity. He is generally charged
12 with enforcement of the Immigration and Nationality Act, which provides for the adjudication of
13 naturalization applications.

14 5. Defendant, Emilio T. Gonzalez, is the Director of the United States Citizenship and
15 Immigration Services ("USCIS"), an agency within DHS, and this action is brought against him
16 in his official capacity. Defendant Gonzalez is generally charged with the overall administration
17 of immigration benefits and services, including naturalization applications.

18 6. Defendant, David Still, is the San Francisco District Director of USCIS, and this action is
19 brought against him in his official capacity. Defendant Director is the official generally charged
20 with supervisory authority over all USCIS operations within his District. As will be shown,
21 Defendant Director is the official with whom Plaintiff's naturalization application remains
22 pending.

23 7. Defendant, Robert S. Mueller, III, is Director of the Federal Bureau of Investigation
24 ("FBI"), and this action is brought against him in his official capacity. As will be shown,
25 Defendant Director has failed to complete the security clearances ("Name Check") on Plaintiff's
26 case.

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JURISDICTION

8. Jurisdiction in this case is proper under the INA § 336(b) and 8 U.S.C. § 1447(b). Relief is requested pursuant to said statutes.

VENUE

9. Venue is proper in this honorable court, pursuant to 8 U.S.C. §1447(b), in that Plaintiff may request a hearing on the matter in the District where Plaintiff resides.

INTRADISTRICT ASSIGNMENT

10. This lawsuit should be assigned to the San Jose Division of this court because a substantial part of the event or omission which give rise to this lawsuit occurred in Santa Clara County.

CAUSE OF ACTION

11. Plaintiff is a lawful permanent resident (A# 075 662 143) of the United States. Plaintiff filed an N-400, *Application for Naturalization*, with the USCIS California Service Center on January 19, 2006. (**EXHIBIT 1**)

12. On March 24, 2006 Plaintiff appeared before the USCIS San Jose sub-office to have her fingerprint taken. (**EXHIBIT 2**)

13. On June 5, 2006, Plaintiff appeared before the USCIS San Jose sub-office for the examination for her N-400 application. Plaintiff passed the tests for English and U.S. history and government, but was informed that a decision could not be made about her application because of a pending FBI Name Check. (**EXHIBIT 3**)

14. It has now been over 392 days since Plaintiff's naturalization examination.

15. Defendants, in violation of 8 U.S. C. § 1447(b), have failed to make a determination on Plaintiff's naturalization application within the 120-day period after the date of examination.

PRAYER

16. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court:

(a) assume jurisdiction over this matter;

- 1 (b) should the Court deem it necessary, order that a hearing take place on this matter;
2 (c) review this matter de novo, and approve Plaintiff's N-400, *Application for*
3 *Naturalization*; or
4 (d) remand the matter with specific instructions for Defendants to complete adjudication
5 of the N-400 within 60 days of receiving the remand order.
6 (e) award reasonable attorney's fees and costs under the Equal Access to Justice Act;
7 (f) grant any other relief at law and in equity as justice may require.
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10 Dated: July 2, 2007

Respectfully Submitted,

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13 Justin Fok, CSBN: 242272
14 Attorney for Plaintiff
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EXHIBIT LIST

Exhibit

Description

1	
2	
3	1 Application for Naturalization Receipt on January 19, 2006
4	2 Fingerprint Appointment on March 24, 2006
5	3 N-652, from Naturalization Interview on June 5, 2006
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Exhibit 1

UNITED STATES OF AMERICA

[illegible]

Exhibit 2

Fingerprint Notification

NOTICE DATE
March 01, 2006

CASE TYPE

INS A#
A 075 662 143

N400 Application For Naturalization

APPLICATION NUMBER
WSC*001439384

RECEIVED DATE
January 19, 2006

PRIORITY DATE
January 19, 2006

PAGE
1 of 1

APPLICANT NAME AND MAILING ADDRESS

CHUN LIANG BAO

SAN JOSE CA 95120



To process your application, INS must take your fingerprints and have them cleared by the FBI. **PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.** If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. **RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.**

APPLICATION SUPPORT CENTER

INS SAN JOSE
122 CHARCOT AVE.
SAN JOSE CA 95131

DATE AND TIME OF APPOINTMENT

03/24/2006
02:00 PM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. **THIS APPOINTMENT NOTICE** and
2. **PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

INS cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

INS SAN JOSE
122 CHARCOT AVE.
SAN JOSE CA 95131

If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICATION NUMBER
WSC*001439384

APPLICANT COPY



WARNING!

Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.

Exhibit 3

U.S. Department of Homeland Security
Citizenship and Immigration Services

N-652, Naturalization Interview Results

A #:

On June 5, 2006, you were interviewed by USCIS Officer djio



A075662143
A075662143

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak / _____ read / _____ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on the Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability / _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) ☒ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

11 FBI

Name: Name
Check "

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.